

09/710,489 (S99-190)

PATENT

REMARKS

Per a telephonic communication with Examiner David Vu on May 6, 2004, the drawing objection has been overcome and the rejections under 35 U.S.C. § 112, 1<sup>st</sup> paragraph, have also been overcome. Applicant thanks the Examiner's suggestion regarding overcoming the 35 U.S.C. § 102(b) rejections.

The proposed amendment is drafted in accordance with the Examiner's suggestion. More specifically, as amended, claim 1 explicitly recites:

10 A structure (e.g., Fig. 9) comprising:

a structural layer consisting essentially of sputtered silicon, said structural layer comprising

a core silicon layer (e.g., 13) patterned with released structures thereof (e.g., 131);

15 a first conductive layer (e.g., Ti2) in contact with and on top of said core silicon layer; and

a second conductive layer (e.g., Ti1) in contact with and below said core silicon layer, wherein said first and second conductive layers have essentially the same shape as said core silicon layer; and

20 a complimentary metal oxide semiconductor circuitry integrated with said structural layer, wherein said semiconductor circuitry has a metalized circuitry layer (e.g., Al) on top of an oxidized layer (e.g., Ox) of a substrate (e.g., 11).

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It is respectfully submitted that dependent claims 9 and 10 are directed to the embodiment shown in Fig. 4 having a released area (22) that, if so desired, can be covered with a sealing layer [Spec. page 17, lines 5]. Since Fig. 9 does not have a release area (22), claim 9 is rewritten as an independent claim to include limitations shown in Fig. 4. More specifically, as amended, claim 9

5 explicitly recites:

A structure (e.g., Fig. 4) comprising:

a substrate (e.g., 1);

a sacrificial layer (e.g., 2) on top of said substrate;

a core silicon layer (e.g., 3Z) on top of said sacrificial layer, wherein said core

10 silicon layer consists essentially of sputtered silicon and is patterned with released structures thereof (e.g., 31);

a released area (e.g., 22) defined by said substrate, said sacrificial layer, and said core silicon layer;

optional aluminum terminals (e.g., A1, *see also*, Spec. page 13, line 13) on top of  
15 said core silicon layer; and

at least one sealing layer for covering said released area.

The amendment proposed herein explicitly overcomes the closest prior art of record, identified as Tang et al. (U.S. Pat. No. 5,025,346), inasmuch as that Tang et al.'s laterally driven resonant  
20 microstructures have layers (as shown in Fig. 41) that are structurally different from the invention as set forth in the claims. An artisan would not have the general knowledge or motivation to modify Tang et al. because sputtered silicon was not a common material of microstructures at the time of the invention. As discussed in the Specification, page, 9, lines 14-26, one of the

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advantages of the present invention, and hence the technical contribution to the society, is that the structure of the claim invention has a sputtered silicon layer that is porous and permeable to HF-based etches at approximately ten times the thicknesses reported for LPCVD deposited polysilicon (Tang et. al.).

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If it is the Examiner's considered opinion that the asserted advantages are not sufficient to overcome the rejection(s) of record, kindly states the reasons for his position in the record. By so doing the Applicant will know that the asserted advantages have actually been considered by the Examiner and, if appeal is taken, the Board of Patent Appeals and Interferences will also be  
10 advised. [MPEP 707.07(f)].

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"The importance of answering applicant's arguments is illustrated by *In re Herrmann*, 261 F.2d 598, 120 USPQ 182 (CCPA 1958) where the applicant urged that the subject matter claimed produced new and useful results. The court noted that since applicant's statement of advantages was not questioned by the examiner or the Board of Appeals, it was constrained to accept the statement at  
face value and therefore found certain claims to be allowable. See also *In re Soni*, 54 F.3d 746, 751, 34 USPQ2d 1684, 1688 (Fed. Cir. 1995) (Office failed to rebut applicant's argument)." (*id.*)

20 Note the second reference, Mitchell et al. (U.S. Pat. No. 5,573,679), is respectfully submitted to be not a proper 35 U.S.C. § 102 reference per MPEP 2131.01.

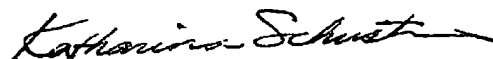
The Applicant welcomes the chance of finalizing the prosecution and forward the application to allowance. The amendments proposed herein encompass a bona fide attempt to accelerate

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prosecution and place the present application in a condition for allowance. Any guidance from the Examiner towards that direction is much appreciated. The undersigned can be reached at 650-331-8413, 10AM-7PM PST, Monday-Friday.

Respectfully submitted,



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